

# SWIDLER BERLIN SHEREFF FRIEDMAN, LLP

THE WASHINGTON HARBOUR  
3000 K STREET, NW, SUITE 300  
WASHINGTON, DC 20007-5116  
TELEPHONE (202) 424-7500  
FACSIMILE (202) 424-7643  
WWW.SWIDLAW.COM

JONATHAN S. FRANKEL  
TELEPHONE: (202) 424-7743  
FACSIMILE: (202) 424-7643  
JSFRANKEL@SWIDLAW.COM

NEW YORK OFFICE  
THE CHRYSLER BUILDING  
405 LEXINGTON AVENUE  
NEW YORK, NY 10174  
TELEPHONE (212) 973-0111  
FACSIMILE (212) 891-9598

July 14, 2004

## **VIA ECFS**

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, DC 20554

Re: Ex Parte  
CC Docket 01-338

Dear Ms. Dortch:

Pursuant to Section 1.1206 of the Commission's rules, 47 C.F.R. § 1.1206, this will provide notice that on July 14, 2004, the undersigned met with Matt Brill, legal advisor to Commissioner Abernathy.

In addition, the following individuals participated in the meeting via conference call: Daniel F. Gonos, Senior Regulatory Analyst, ACN Communications, Inc.; John Tassone, Senior Director of Local Product Marketing; Bruce Bennett, Vice President of External Relations, ATX Communications, Inc.; Pamela Hintz, Vice President of Legal and Regulatory Affairs, CTC Communications, Corp.; Brad Sheres, LDMI Telecommunications, Inc.; Richard Heatter, Vice President Legal Affairs, Mpower Communications, Inc.; and William Courter, General Counsel, McLeodUSA Telecommunications, Inc.

We presented the views set forth in the attached document which was provided at the meeting.

Marlene H. Dortch  
July 14, 2004  
Page 2

Regards,

/s/ Jonathan S. Frankel

Patrick J. Donovan  
Paul B. Hudson  
Jonathan S. Frankel

Enclosures

### **BOC Commitment Letters Are Inadequate**

- Verizon, Qwest make no commitment for loops or transport.
- None address dark fiber.
- Year end may not be enough time to complete FCC rulemaking.
- BOCs want to amend interconnection agreements to reflect *USTA II*, impose special access pricing.
  - *E.g.*, Current Qwest proposal: Amend ICA so that CLECs “shall not order, and Qwest will not provide” DS1, DS3, or dark fiber loops and transport, DS1 EELs, switching.

### **Interim Stability Plan**

- Loop rules were at most remanded, not vacated.
- Preserve BOC obligations as reflected in ICAs pre-*USTA II*.
- Streamline/accelerate new rulemaking:
  - Rely to the extent possible on previous record.
  - Limit review to *USTA II* issues.
- No legal necessity for interim price increases.

### **FCC Has Authority to Adopt Interim Relief**

- Loop rules were at most remanded, not vacated.
- May adopt emergency requirements without notice and comment for good cause. USC Section 553(b)(3)(B). Avoidance of market disruption pending further reforms is justification for temporary requirements. *CompTel v. FCC*, 309 F. 3d 8, 14 (2002).
- May rely on previous record. *Mobil Oil Corporation v. EPA*, 35 F.3d 579, (D.C. Cir. 1994)
- Section 201: TRO Line Sharing; SBC 12/19/02 *Ex Parte*.
- Section 271: Checklist items must continue to be provided even if not within 251 UNE obligations. *Texas 271 Order*, 15 FCC Rcd, Para. 348 (2000).
  - May rely on TELRIC pricing since 271 pricing not set.